

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DAIWA NAVIGATION,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 180

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250.00 civil penalty for an alleged violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) in the Seattle offices of respondent at 1:45 p.m., November 13, 1972.

Appellant was represented by James Van der Veen, operations manager of Kerr Steamship Company, Inc., agents for appellant. Respondent appeared through its counsel, Keith D. McGoffin. Shirley Marshall, Seattle court reporter, recorded the proceedings.

No compromise settlement being possible, the proceedings quickly

1 assumed the status of a formal hearing. Witnesses were sworn and
2 testified. Exhibits were offered and admitted.

3 On the basis of testimony heard and exhibits examined, the
4 Pollution Control Hearings Board prepared Proposed Findings of Fact,
5 Conclusions and Order which were submitted to the appellant and
6 respondent on December 21, 1972. No objections or exceptions to the
7 Proposed Findings, Conclusions and Order having been received, the
8 Pollution Control Hearings Board makes and enters the following:

9 FINDINGS OF FACT

10 I.

11 On July 27, 1972, while at berth in Blair Waterway, Tacoma, Pierce
12 County, the MV TACOMA MARU, owned by appellant, emitted smoke from its
13 stack for ten minutes of an opacity equal to No. 3 on the Ringelmann
14 scale.

15 II.

16 Section 9.03 of respondent's Regulation I forbids the emission by
17 a vessel of smoke exceeding No. 2 on the Ringelmann scale for more
18 than three minutes in any one hour.

19 III.

20 The emission, when called to the attention of ship's personnel,
21 was reduced promptly to an opacity no greater than No. 2 on the
22 Ringelmann scale. Personnel also took maintenance steps to prevent
23 subsequent alleged violations.

24 IV.

25 Because of the incident, respondent served appellant with Notice
26 of Violation No. 5511 and Notice of Civil Penalty No. 372 in the

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 maximum allowable amount of \$250.00.

2 V.

3 The incident was the first citation by respondent against the
4 MV TACOMA MARU which, since the incident, twice has called at Tacoma
5 without subsequent alleged violations.

6 In view of these facts, the Pollution Control Hearings Board comes
7 to these

8 CONCLUSIONS

9 I.

10 Appellant was in violation of respondent's Regulation I on
11 July 27, 1972 in Blair Waterway of Tacoma, Pierce County.

12 II.

13 The civil penalty appears excessive because of prompt efforts
14 taken to control the emission on July 27, 1972, and subsequently and
15 further because Notice of Violation No. 5511 is the first one of record
16 against the MV TACOMA MARU.

17 Therefore, the Pollution Control Hearings Board makes this

18 ORDER

19 The appeal is denied, but Notice of Civil Penalty No. 372 is
20 remanded to respondent for selection of a more reasonable penalty not to
21 exceed one-half of the amount specified in Notice of Civil Penalty No. 372

22 DONE at Olympia, Washington this 6th day of February, 1973.

23 POLLUTION CONTROL HEARINGS BOARD

24 Walt Woodward
WALT WOODWARD, Chairman

5
26 W. A. GISSBERG, Member

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER
James T. Sheehy
JAMES T. SHEEHY, Member